

Decision 05-05-007 May 5, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking for the purposes of revising General Order 96-A regarding informal filings at the Commission.

Rulemaking 98-07-038
(Filed July 23, 1998)

**OPINION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK**

Summary

This decision awards The Utility Reform Network (TURN) \$29,773.94 in compensation for its contributions to Decision (D.) 01-07-026, D.02-01-038 and D.05-01-032. This award will be paid from the Commission's intervenor compensation program fund.

Background

This proceeding addresses Commission practice for reviewing and approving or rejecting advice letters, and for reviewing the various utility reports that are required by law, but that do not seek Commission approval or authorization for particular utility actions. Collectively, we refer to these advice letters and reports as "informal filings" to distinguish them from the Commission's formal proceedings (applications, complaints, investigations, etc.), which typically require a decision rendered by the Commission and which often involve evidentiary hearings. In contrast, advice letters typically can be resolved by Commission staff.

While formal proceedings rightly absorb most of the Commission's attention, informal filings play a vital role regarding utilities' implementation of

and compliance with statutes and Commission orders, as well as the introduction of new utility products and services. Numerically, informal filings also far outnumber formal proceedings. Thus, the handling of informal filings generally must accommodate the high volume, as well as quickly identify and resolve those relatively few such filings that are problematic.

The proceeding began with a comprehensive proposal to revise General Order (GO) 96-A, which provides guidance to all utilities on tariff filing and advice letters. This initial proposal was completely rewritten, and comments were again solicited. At this point, the Commission determined that it would adopt portions of the proposed rules on an interim basis while continuing a review of certain other rules, chiefly those that are specific to particular utility industries. To date, there have been three interim opinions, all the subject of TURN's compensation request. D.01-07-026, regarding publishing and providing service under tariffs (including internet publication); D.02-01-038, regarding notice that telecommunications utilities provide when proposing a rate increase, withdrawal of service, or certain kinds of transfers; and D.05-01-032, regarding advice letter filing, service suspension, and disposition.

The Commission is now in the process of preparing a final adoption order. That order will compile and codify the rules adopted in the interim opinions, and will also adopt the outstanding rules proposals with such modifications as the Commission deems appropriate. The finished product, GO 96-B, will wholly supersede GO 96-A.

Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires that the intervenor satisfy all of the following procedures and criteria to obtain a compensation award:

1. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
2. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC) (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate significant financial hardship. (§ 1804(b)(1).)
5. The intervenor's presentation must have made a substantial contribution to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§ 1803(a).)

For discussion here, the procedural issues in Items 1-3 above are combined, followed by separate discussions on Items 4-6.

Procedural Issues

TURN is a non-profit consumer advocacy group specifically organized to represent the interests of residential and small commercial utility customers in California. TURN has a long history of representing consumers before the Commission and we find that TURN qualifies as a customer pursuant to § 1802(b).

TURN filed its request for compensation on March 15, 2005, within the required 60 days of D.05-01-032. No PHC was held in this proceeding, nor was any alternative procedure established for filing an NOI. Since no PHC was held, TURN included information normally provided in an NOI (nature and extent of its planned participation and proposed budget) in its request for compensation.

The request for compensation is unopposed, and we accept the information provided in the request as satisfying the requirements of the NOI. Considering the above, TURN has met all the procedural requirements necessary to make its request for compensation.

As noted earlier, this proceeding is still open; however, under Rule 76.72 of our Rules of Practice and Procedure, an intervenor need not await the decision closing the proceeding if the intervenor has substantially contributed to the resolution of an issue in an earlier decision. Given the length of this proceeding, it is reasonable for TURN to seek compensation for its contribution to the interim opinions, without waiting for the final adoption order.

Financial Hardship

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. In the case of groups or organizations, significant financial hardship is demonstrated by showing that the economic interest of individual members is small compared to the overall costs of effective participation. (Pub. Util. Code § 1802(g).) Such a finding is normally made in the ALJ's preliminary ruling as to whether the customer will be eligible for compensation (§ 1804(b)).

In its request for compensation, TURN asserted financial hardship through a rebuttal presumption, as allowed by § 1804(b)(1), by showing a finding to meet this requirement was made in another proceeding within the last year (Ruling dated July 27, 2004 in Rulemaking 04-04-003). We find that TURN meets the significant financial hardship condition.

Substantial Contribution

In evaluating whether a customer made substantial contribution, we look at several things. First, did the ALJ or Commission adopt one or more of the

factual or legal contentions, or specify policy or procedural recommendations put forward by the customer? (*See* § 802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§ 1802(i) and 1802.5.)

As described in § 802(h), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.¹

With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

Broadly speaking, the interim opinions adopted many of TURN's contentions or recommendations. TURN's success is objectively demonstrated by many instances where the opinions rely on TURN's advocacy; in other instances, an opinion's logic in adopting a particular rule follows TURN's. TURN also obtained partial success in some instances where an adopted rule was the result of compromise.

Taking up the interim opinions in order, we see that D.01-07-026 followed TURN's recommendations both as to the establishment of our internet

¹ D.98-04-059, 79 CPUC2d, 628 at 653.

publication requirement for tariffs and for service disclosure rules. Finding of Fact 7 and 11 in that decision both track TURN's analysis.

TURN asserts that its contribution to D.02-01-038 "is evident throughout the decision," an assertion that TURN documents by eight citations to that decision.² We have checked these citations and agree with TURN that they demonstrate TURN's comprehensive and persuasive participation.

In some instances, TURN advanced the same or similar positions as other parties whose position TURN shared. Among those rules most directly influenced by TURN's contributions is the rule permitting notice by e-mail to customers who receive their bills via e-mail, the rule on notice of withdrawal of service, and the rule on customer transfers.

Regarding D.05-01-032, TURN successfully urged several revisions to the proposed rules. For example, the decision clarified the limited circumstances under which an advice letter can be protested on policy grounds. The decision also accepted a recommendation by TURN and utilities for streamlining the advice letter appeals process.

In short, TURN has demonstrated substantial contributions to all three interim opinions. TURN's work is therefore compensable to the extent that the costs it incurred are reasonable. We take up this issue next.

Reasonableness of Requested Compensation

Compensation Summary

TURN requests \$29,773.94 for its participation in this proceeding. To assist us in determining the reasonableness of the requested compensation,

² TURN's exemplary care in connecting decision text with TURN contributions greatly facilitates the process of determining substantial contribution.

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The requested costs should be reasonable in relation to the benefits realized.

In a rulemaking such as this one, where rates are not set and are affected remotely, if at all, productivity is not easily quantified. We therefore apply qualitative standards: How broad is the impact of the proceeding? How significant are the policies that are being established? How great an impact did the intervenor have on the outcome? These are all helpful questions to consider if a dollar value cannot be assigned.

This rulemaking is very broad. The adopted rules apply to virtually all stationary utilities (electricity, gas, telecommunications, water and sewer). About 5,000 filings per year are covered. The adopted policies are a mixture ranging from the highly technical and esoteric to important and much-needed modernizations. TURN's impact on the proceeding has been remarkable both for quality and breadth. In light of these considerations, we find TURN's participation has been productive.

Fees and Costs

The components of this request must constitute reasonable fees and costs when compared to market rates for similar services from comparably qualified persons. TURN provided the following summary of its requested professional hours and related expenses:

<u>Attorney's Fees</u>			
Michael Florio	1998	10.5 hours @ 300/hour	\$ 3,150.50
Michael Florio	2001	5.75 hours @ 350/hour	\$ 2,012.50
Michael Florio	2004	1 hour @ 490/hour	\$ 490.00
Robert Finkelstein	2004	0.5 hour @ 395/hour	\$ 197.50
Robert Finkelstein	Comp request	10 hours @ 197.50	\$ 1,975.00
Tom Long	1998	23.5 hours @ 260/hour	\$ 6,110.00
Christine Mailloux	2001	12 hours @ 250/hour	\$ 3,000.00
Christine Mailloux	2004	16.25 @ 325/hour	\$ 5,281.25
James Anthony	2001	32 hours @ 190/hour	<u>\$ 6,080.00</u>

Subtotal Attorney Fee	\$28,296.50
<u>Expenses</u>	
Photocopying	\$ 1,249.20
Postage	<u>\$ 228.49</u>
Subtotal Expenses	\$ 1,477.69
<u>Total</u>	<u>\$29,773.94</u>

TURN documented its claimed hours by presenting a daily breakdown of the hours accompanied by a brief description of each activity. The records reasonably support the claim for total hours.

Attorney Florio is TURN's co-director for energy policy and senior attorney. An hourly rate of \$300 is being requested for work he performed in 1998, \$350 for 2001, and \$490 for 2004. We previously approved these same rates for Florio for 1998 in D.00-02-008, for 2001 in D.02-06-070, and for 2004 in D.05-01-029. We find these rates reasonable here.

Attorney Finkelstein is the Executive Director of TURN. An hourly rate of \$395 is requested for work performed in 2004. We previously approved this same rate for Finkelstein for 2004 in D.05-03-016 and find that rate reasonable here. Finkelstein prepared the compensation request in this proceeding in 2005 and is awarded an hourly rate of \$197.50 for this work (one-half of the 2004 rate). As requested by TURN, this award shall not preclude Finkelstein from seeking a higher 2005 rate for work in other proceedings.

For Attorney Mailloux, hourly rates of \$250 for work performed in 2001, and \$325 for 2004 are requested. We previously approved these same rates for Mailloux for 2001 in D.03-05-027, and for 2004 in D.04-12-054. We find these rates reasonable here.

For Attorney Long, hourly rates of \$260 are requested for work performed in 1998. We previously approved this same rate for Long for 1998 in D.99-07-045 and find that rate reasonable here.

For Attorney Anthony, hourly rates of \$190 are requested for work performed in 2001. We previously approved this same rate for Anthony for 2001 in D.02-04-013 and find that rate reasonable here.

TURN is requesting \$1,249.20 for photocopying expenses and \$228.49 for postage expenses. These business expenses are reasonable as they relate entirely to the preparation and distribution of pleadings made by TURN in this proceeding.

Award

We award TURN \$29,773.94. This calculation is based on the hourly rates and business expenses described above and we find these rates and expenses to be reasonable. This is a quasi-legislative rulemaking proceeding affecting multiple industries and all utilities subject to GO 96-B. We therefore find it appropriate to authorize payment of the compensation award from the intervenor compensation program fund described in D.00-01-020.

Consistent with previous Commission decisions, we will order that, after May 29, 2005 (the 75th day after TURN filed its compensation request), interest be paid on TURN's award amount at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15. Interest will continue on this award until the utilities make full payment.

We remind TURN that, like all intervenors, Commission staff may audit TURN's records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.

Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Steven Kotz and John Thorson are the assigned ALJs in this proceeding.

Findings of Fact

1. TURN represents consumers, customers, or subscribers of various public utilities, all regulated by the Commission.
2. The individual economic interests of TURN members are small in comparison to the costs incurred in effectively participating in these proceedings.
3. TURN filed a request for compensation on March 15, 2005.
4. A PHC in this proceeding was not held, nor was any other alternative procedure established for filing a NOI.
5. TURN filed information normally addressed in an NOI in its request for compensation.
6. TURN made a substantial contribution to D.01-07-026, D.02-01-038 and D.05-01-032, as set forth in the foregoing opinion.
7. TURN requested hourly rates for attorneys that are reasonable when compared to the market rates for persons with similar training and experience.
8. TURN requested reasonable compensation for related business expenses.
9. The total of these reasonable rates and fees is \$29,773.94.
10. The subject rulemaking is quasi-legislative, affecting multiple industries and utilities subject to the Commission's jurisdiction.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed fees and expenses incurred in making substantial contributions to D.01-07-026, D.02-01-038 and D.05-01-032.

2. The comment period should be waived, and today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$29,773.94 as compensation for its substantial contributions to Decision (D.) 01-07-026, D.02-01-038 and D.05-01-032.

2. Within 30 days of the effective date of this decision, TURN shall be paid this award from the Commission's intervenor compensation program fund described in D.00-01-020.

3. Interest shall be paid on the award beginning May 29, 2005, at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made.

4. The comment period for today's decision is waived.

This order is effective today.

Dated May 5, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY

DIAN M. GRUENEICH
Commissioners

Comr. Bohn recused himself
from this agenda item and was not
part of the quorum in its consideration.

Compensation Decision Summary Information

Compensation Decision:	D0505007
Contribution Decisions:	D0107026, D0201038, D0501032
Proceeding:	R9807038
Author:	ALJ Kotz
Payers:	Intervenor Compensation Program Fund (D.0001020)

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
The Utility Reform Network	3/15/2005	\$29,773.94	\$29,773.94	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michel	Florio	Attorney	The Utility Reform Network	\$300	1998	\$300
Michel	Florio	Attorney	The Utility Reform Network	\$350	2001	\$350
Michel	Florio	Attorney	The Utility Reform Network	\$490	2004	\$490
Robert	Finkelstein	Attorney	The Utility Reform Network	\$395	2004	\$395
Christine	Mailloux	Attorney	The Utility Reform Network	\$250	2001	\$250
Christine	Mailloux	Attorney	The Utility Reform Network	\$325	2004	\$325
Tom	Long	Attorney	The Utility Reform Network	\$260	1998	\$260
James	Anthony	Attorney	The Utility Reform Network	\$190	2001	\$190